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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Rape and abuse of women in the areas of armed conflict in the former Yugoslavia

Report of the Secretary-General

I. INTRODUCTION

1. At its forty-eighth session the General Assembly adopted resolution 48/143 of 20 December 1993, entitled "Rape and abuse of women in the areas of armed conflict in the former Yugoslavia", in which it condemned and demanded an end to the practice of the rape and abuse of women and children and expressed outrage at its use as a weapon of war and an instrument of "ethnic cleansing", in particular against Muslim women and children in Bosnia and Herzegovina. To that end, it urged all Member States to take action to bring the practice to an end and to bring the perpetrators to justice, invited the Commission on Human Rights to remain seized of the issue, and encouraged the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 to give priority to cases of abuse of women and children. All States and relevant intergovernmental and non-governmental organizations were urged to provide appropriate support to victims of rape and abuse. In conclusion, the Assembly requested the Secretary-General to provide such necessary means as available to him in the area to enable any future missions to have free and secure access to places of detention, and requested him to submit a report on the implementation of the resolution to the Assembly not later than 31 January 1994.

2. In conformity with the above-mentioned invitation to the Commission on Human Rights, the Secretary-General has drawn the resolution to that body's attention in the annotations to the agenda of the fiftieth session of the Commission on Human Rights. 1/ With regard to the request for provision by the Secretary-General of necessary means, the programme budget for the biennium

1994-1995 provides resources for missions to be carried out by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia, accompanied, if necessary, by medical experts, as well as for similar missions of enquiry by the Commission of Experts established pursuant to Security Council resolution 780 (1992) of 6 October 1992.

3. The present report includes information provided by the Commission of Experts and the Special Rapporteur, Mr. Tadeusz Mazowiecki.

4. The Secretary-General also draws attention to his report to the Commission on Human Rights of 30 June 1993. 2/ That report addressed the problem of the widespread occurrence of rape and responses to the problem in peace negotiations in Bosnia and Herzegovina and in the activities of the Special Rapporteur, the Commission of Experts, the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women, the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. The report also described the relevant activities of the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies.

II. ACTIVITIES OF THE COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 780 (1992)

5. Throughout the various phases of the armed conflicts in the former Yugoslavia, reports received by the Commission of Experts have referred to allegations of widespread and systematic rape and other forms of sexual assault. The Commission of Experts therefore decided at an early stage to examine the question of whether the systematic perpetration of such acts, or the development and encouragement of a policy promoting such acts, should be regarded as crimes in themselves and, if so, as war crimes or crimes against humanity. Thus, the Commission of Experts, from the beginning, decided to include selective in-depth investigations of allegations of systematic sexual assaults in its plan of work and to study all available reports on systematic sexual assaults. It also decided to determine as soon as possible the most effective way to approach the problem and whether on-site investigations should be undertaken. 3/

6. During the conduct of these investigations, the Commission of Experts maintained cooperation with a number of Governments of Member States, with United Nations bodies such as the Commission of Human Rights and its Special Rapporteur and with several non-governmental organizations.

7. During the mission to the former Yugoslavia in April 1993, the Rapporteur for the gathering and analysis of facts and the Rapporteur for on-site investigations went to Sarajevo and met with the War Crimes Commission of Bosnia and Herzegovina. They asked for evidence of rape cases and met with a group of doctors and investigators who dealt with these questions. They also met with rape victims from Foca. The two Commissioners were promised documentation, which was delivered in June/July 1993 as described below.

8. Between 20 June and 9 July 1993 the Commission of Experts sent a mission to Sarajevo 4/ to conduct several pilot studies, including one on rape, and to receive the documentation on rape cases that the War Crimes Commission of Bosnia and Herzegovina had promised in April. During the mission, the Commission of Experts obtained from the War Crimes Commission all their information identified as relating to this issue (listing 126 victims, 113 incidents, 252 alleged perpetrators, 73 witnesses and 100 documents). The Commission of Experts also received copies of all the files in the possession of local authorities and identified as related to rape. The information contained in the files has been entered into the database of the Commission of Experts.

9. During that mission the team also interviewed one rape victim, a 13-year-old girl who was held captive for 10 days in July 1992 and was a victim of multiple rape. As this experience in the field showed, the victims of rape had as a rule left their homes and were likely to be found either in refugee camps or to have moved to resettlement. Under these circumstances, the Commission decided that small teams with a high proportion of female personnel, deployed (with the cooperation of the Governments providing refugee camps or resettlement for people from the former Yugoslavia) for extended periods of time in those locations would be the most effective means of gathering such information.

10. At its sixth session, held on 13 and 14 July 1993, the Commission decided that further planning for this investigation would be done on the basis of the study on systematic sexual assault, which was provided shortly after the session by the Rapporteur on the gathering and analysis of facts on the basis of the information contained in the Commission's database. 5/

11. The study noted that rape had been reported to have been committed by all sides to the conflict. However, out of 330 reported cases reviewed in the study at that time, the largest number of victims have been Bosnian Muslims and the largest number of alleged perpetrators have been Bosnian Serbs. These alleged perpetrators include military personnel, special forces (some of whom are from outside Bosnia and Herzegovina), local police and civilians.

12. Some of the rape cases, the study said, are clearly the result of individual or small-group conduct without evidence of command responsibility. Others may be part of an overall pattern. Because of a variety of factors, such a pattern may lead to a conclusion that a systematic rape policy existed, but this remains to be proved. Among these factors is the coincidence in time between military action designed to displace civilian populations and widespread rape of the same populations. Group involvement of the members of the same military units in rape suggests command responsibility by commission or omission; in this respect, the manner in which this type of rape was conducted in multiple locations and within a fairly close period of time (mostly between May and December 1992) is also a significant factor. Another factor in this connection is the contemporaneous existence of other violations of international humanitarian law in a given region occurring simultaneously in prison camps, in the battlefield and in the civilian regions of occupied areas.

13. The study suggested that if further investigations prove that a nexus exists between these activities and the policy of "ethnic cleansing", then it could be argued that rape has been used as an instrument of war and carried out

in a manner designed to instil terror, shame and other psychological consequences in a given population group to coerce their removal and prevent their return. However, the consequences and conclusions of such practice have yet to be determined more fully by comprehensive investigations.

14. The Commission of Experts considered the study and decided to proceed by organizing interviews with alleged rape victims both in the former Yugoslavia and in refugee camps in a number of European countries and to set up female teams of investigators for this purpose. This concept was discussed by the Commission of Experts with the participation of a group of non-governmental organizations between October and December 1993. During these discussions, the scope of this investigation was broadened, and the final plan of the investigation, entitled "Plan of Action for an in-depth investigation of allegations of sexual assault, extrajudicial executions, torture and alleged violations of international humanitarian law in detention camps in connection with the hostilities in the former Yugoslavia", was approved by the Commission of Experts at its ninth session, held from 13 to 15 December 1993. Thus the investigation will now encompass violations of international humanitarian law against the person, including extrajudicial executions, torture and other violations of international humanitarian law, particularly in detention camps. However, special emphasis will be given to allegations of sexual assault.

15. Through this Plan of Action, the Commission of Experts intends to gather evidence and to report its findings through the Secretary-General to the Security Council in accordance with its mandate. The primary goal is to produce specific evidence for the report of the Commission of Experts which may also be used for prosecutions.

16. Phase I of the investigation will take place from January to March 1994 in the former Yugoslavia. During that period, teams of interviewers will travel from their base at Zagreb to wherever witnesses and victims may wish to testify. It is fundamental to the work of the Commission of Experts that it welcomes testimony from any person, whether man or woman and regardless of their ethnic origin. Interviews in phase I may be conducted in Croatia, including the United Nations Protected Areas (UNPAs), Slovenia and the Federal Republic of Yugoslavia (Serbia and Montenegro). For reasons of security of witnesses and victims, interviews will not be carried out in Bosnia and Herzegovina at this stage.

17. It is envisaged that phase II will involve interviews in asylum countries other than those of the former Yugoslavia. The Commission of Experts is in contact with 15 such host States, 6/ as well as organizations and individuals, in the hope that they may be able to assist in:

(a) Identifying witnesses and victims;

(b) Locating those willing to offer evidence to the Commission;

(c) Providing psychological insight into the nature and condition of the victims, in order to assist the interviewers in ensuring an appropriate approach to interviews.

18. The Commission of Experts also hopes that refugee communities in those countries will have the opportunity to give their testimony to the Commission. It may be that some elements of phase II will be conducted in parallel to phase I if States request that interview teams be sent earlier (such as is the case with Turkey).

19. The interviews in phase I will be conducted by lawyers experienced in violent crimes and particularly in violent sexual offences. All those involved in the interview process, including interpreters (who will be specially selected), will be suitably qualified and impartial women under contract with the Commission of Experts.

20. Throughout the investigation, the interest of the victims and witnesses is paramount. Particular attention will be paid to their physical and psychological well-being as well as to their personal security and the confidentiality of any information they may provide. Interviews will only be conducted with the consent of the witness/victim.

21. A highly qualified group of mental health specialists, including psychiatrists and psychologists, with experience in post-traumatic stress will be contracted by the Commission of Experts. This group of experts, consisting mainly of women, will be available to the victim/witness as they wish before, after and possibly during the interview. Those who wish to give information should know that these mental health professionals will liaise with their local counterparts to ensure that post-interview counselling will be made available to each interviewee.

22. The results of this study will be reflected in the final report of the Commission of Experts, which is expected to be submitted by the end of April 1994.

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

23. Given the attention being paid by the Commission of Experts to the issue of rape and sexual abuse, and in order to avoid an overlap of activities, the Special Rapporteur does not at present intend to undertake special studies. He continues, however, to pay attention to the widespread occurrence of rape, particularly in Bosnia and Herzegovina. The Special Rapporteur has referred to the practice in many of his reports. On the initiative of the Special Rapporteur, a team of medical experts visited the former Yugoslavia from 12 to 23 January 1993 to investigate allegations of rape, particularly in the context of the conflict in Bosnia and Herzegovina. The report of the medical experts was attached _in extenso_ as annex II to his report dated 10 February 1993. 7/ In that report, the Special Rapporteur endorsed the findings of the medical experts and drew attention, _inter alia_, to their conclusion that in Bosnia and Herzegovina and in Croatia rape has been used as an instrument of "ethnic cleansing". In his report dated 19 May 1993, the Special Rapporteur drew attention to incidents at Vitez and Ahmici in Bosnia and Herzegovina. 8/ In his report of 6 September 1993, 9/ he referred to incidents reported from Mostar, in Bosnia and Herzegovina. The Special Rapporteur's fifth periodic report, dated

17 November 1993, 10/ devotes a section to the issue of rape in Bosnia and Herzegovina. As well as detailing a number of incidents and allegations of rape, the Special Rapporteur condemns, "the continuing commission of the crime of rape and of all other forms of sexual abuse". 11/

24. The Special Rapporteur is currently preparing his sixth and final periodic report for the fiftieth session of the Commission on Human Rights. This report will also contain a section updating his fifth periodic report with regard to the incidence of rape in Bosnia and Herzegovina.

Notes

1/ E/CN.4/1994/1/Add.2.

2/ E/CN.4/1994/5.

3/ See S/25274, annex I, paras. 58-60 and 66-67.

4/ See S/26545, annex, paras. 48-50.

5/ Ibid., paras. 67-70.

6/ The Commission of Experts contacted the Governments of Austria, Belgium, Canada, Denmark, France, Germany, Israel, Italy, the Netherlands, Norway, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The Commission of Experts received responses from Sweden, Norway, Denmark, Israel, Germany, Turkey, Canada and the United Kingdom of Great Britain and Northern Ireland.

7/ E/CN.4/1993/50.

8/ E/CN.4/1994/4.

9/ E/CN.4/1994/8.

10/ E/CN.4/1994/47.

11/ Ibid., para. 229.